

(D) A statement that there is no control group within the meaning of paragraph (c)(1)(ii) of this section;

(E) A list of U.S. persons who are officers, directors or five-percent target shareholders and the percentage of the total voting power and the total value of the stock of the transferee foreign corporation owned by such persons both immediately before and immediately after the transaction; and

(F) A statement that the active trade or business test described in paragraph (c)(1)(iii) of this section is satisfied by the transferee foreign corporation or an affiliate and a description of such business.

(ii) To rebut the ownership presumption of paragraph (c)(2) of this section, the U.S. target company must obtain ownership statements (described in paragraph (c)(6)(i) of this section) from a sufficient number of persons that transfer U.S. target company stock or securities (or other property) in the transaction that are not U.S. persons to demonstrate that the 50 percent threshold is not exceeded. In addition, the U.S. target company must attach to its timely filed U.S. income tax return (or a subsequent, timely filed amended return) for the taxable year in which the transfer occurs a statement, titled "Section 367(a)—Compilation of Ownership Statements under Reg. § 1.367(a)-3T(c)," signed under penalties of perjury by an officer of the corporation, disclosing the following information:

(A) The amount (specified as to the percentage of the total voting power and the total value) of stock of the transferee foreign corporation received, in the aggregate, by U.S. transferors;

(B) The amount (specified as to the percentage of total voting power and total value) of stock of the transferee foreign corporation received, in the aggregate, by foreign persons that filed ownership statements;

(C) A summary of the information tabulated from the ownership statements, including—

(1) The names of the persons that filed ownership statements stating that they are not U.S. persons;

(2) The countries of residence and citizenship of such persons; and

(3) The ownership of such persons (by voting power and by value) in the U.S. target company prior to the exchange and the amount of stock of the transferee foreign corporation (by voting power and value) received by such persons in the exchange.

(iii) For purposes of paragraph (c)(4), an income tax return (including an amended return) will be considered timely filed if it is filed prior to the time

that the Internal Revenue Service discovers that the reporting requirements of this paragraph have not been satisfied.

(5) *Special Rules*—(i) *Treatment of partnerships*. For purposes of paragraph (c), if a partnership (whether domestic or foreign) owns or transfers stock or securities or other property in an exchange described in section 367(a), each partner in the partnership, and not the partnership itself, is treated as owning and as having transferred a proportionate share of the stock or securities or other property. See § 1.367(a)-1T(c)(3).

(ii) *Treatment of options*. For purposes of paragraph (c) of this section, one or more options (or an interest similar to an option) will be treated as exercised and thus will be counted as stock for purposes of determining whether the 50 percent threshold is exceeded or whether a control group exists if a principal purpose of the issuance or the acquisition of the option (or other interest) was the avoidance of the general rule contained in section 367(a).

(iii) *U.S. target has a vestigial ownership interest in transferee foreign corporation*. In cases where, immediately after the transfer, the U.S. target company owns, directly or indirectly (applying the attribution rules of sections 267(c)(1) and (5)) stock of the transferee foreign corporation, that stock will not in any way be taken into account (and, thus, will not be treated as outstanding) in determining whether the 50 percent threshold under paragraph (c)(1)(i) of this section is exceeded or whether a control group under paragraph (c)(1)(ii) of this section exists.

(iv) *Attribution rule*. The rules of section 958 shall apply for purposes of determining the ownership of stock, securities or other property under this paragraph (c).

(6) *Definitions*—(i) *Ownership statement*. An ownership statement is a statement, signed under penalties of perjury, stating—

(A) The identity and taxpayer identification number, if any, of the person making the statement;

(B) That the person making the statement is not a U.S. person (as defined in paragraph (c)(6)(iv) of this section);

(C) That the person making the statement is not related to any U.S. person to whom the stock or securities owned by the person making the statement are attributable under the rules of section 958, or, if stock or securities are so attributable, the

identity and taxpayer identification number of the relevant U.S. person;

(D) The citizenship, permanent residence, home address, and U.S. address, if any, of the person making the statement; and

(E) The ownership such person has (by voting power and by value) in the U.S. target company prior to the exchange and the amount of stock of the transferee foreign corporation (by voting power and value) received by such person in the exchange.

(ii) *Five-percent transferee shareholder*. A five-percent transferee shareholder is a person that owns at least five percent of either the total voting power or the total value of the stock of the transferee foreign corporation immediately after the transfer described in section 367(a)(1). For special rules involving cases in which stock is held by a partnership, see paragraph (c)(5)(i) of this section.

(iii) *Five-percent target shareholder*. A five-percent target shareholder is a person that owns at least five percent of either the total voting power or the total value of the stock of the U.S. target company immediately prior to the transfer described in section 367(a)(1). If the stock of the U.S. target company is described in Rule 13d-1(d) of Regulation 13D (17 CFR 240.13d-1(d)) (or any rule or regulation to generally the same effect), promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 USC 78m), the existence or absence of filings of Schedule 13-D or 13-G (or any similar schedules) may be relied upon for purposes of identifying five-percent target shareholders. For special rules involving cases in which U.S. target company stock is held by a partnership, see paragraph (c)(5)(i) of this section.

(iv) *U.S. Person*. For purposes of this section, a U.S. person is defined by reference to § 1.367(a)-1T(d)(1). For application of the rules of this section to stock or securities owned or transferred by a partnership that is a U.S. person, however, see paragraph (c)(5)(i) of this section.

(v) *U.S. Transferor*. A U.S. transferor is a U.S. person (as defined in paragraph (c)(6)(iv) of this section) who transfers directly, indirectly or constructively stock or securities of the U.S. target company or other property in exchange for stock of the transferee foreign corporation in an exchange described in section 367.

(vi) *Transferee foreign corporation*. A transferee foreign corporation is the foreign corporation whose stock is received in the exchange by U.S. persons.